



National Transportation Safety Board

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OFFICE OF THE GENERAL COUNSEL

September 10, 2018

VIA ELECTRONIC MAIL TO mprieto@jud11.flcourts.org

The Honorable Jennifer D. Bailey
Dade County Courthouse
73 West Flagler Street, Rm 635
Miami, Florida 33130

Re: *Marquise Rashaad Hepburn v. Figg Bridge Engineers, Inc., et al.*,
Case No. 2018-008144-CA-03

Dear Judge Bailey:

As you requested at the August 15, 2018 hearing in this matter, I write to provide you with additional information about the National Transportation Safety Board's (NTSB) ongoing investigation into the collapse of the Florida International University (FIU)/Sweetwater pedestrian bridge on March 15, 2018, as well as to answer some of the questions regarding NTSB procedures which have arisen in your hearings in this case.

We have been informed that possible mediation efforts are underway to resolve the personal injury and death claims arising from the bridge collapse. The NTSB supports such efforts and will accommodate requests to release investigative information to the extent possible consistent with the needs of our investigation.

Since the beginning of our investigation, pursuant to 49 C.F.R § 831.13, the NTSB has prohibited all parties to our investigation from releasing investigative information absent NTSB approval. In this context, the term "party" means an organization appointed to provide technical assistance to the NTSB. It is not an adversarial designation. Party participation in our investigation is critical, as the parties possess unique technical information about the specifics of the bridge design, construction and installation processes, as well as events which occurred in the days leading up to the accident.

The general restrictions on release of investigative information remain in place as to all investigative information, not limited to information developed during the course of the investigation after the accident. *See* 49 C.F.R § 831.13(a)¹. However, recognizing the intense

¹ 49 C.F.R § 831.13(a) provides:

This section applies to:

- (1) Information related to the accident or incident;
- (2) Any information collected or compiled by the NTSB as part of its investigation, such as photographs, visual representations of factual data, physical evidence from the scene of the accident, interview statements, wreckage documentation, flight data and cockpit voice recorder information, and surveillance video; and

public interest in this accident, the NTSB has undertaken to authorize release of as much investigative information as possible while ensuring the integrity of the ongoing investigation. To that end, we have authorized all parties to our investigation to release all responsive materials in their custody or control which existed on or before February 19, 2018. The February 19, 2018 cutoff date is not arbitrary; NTSB conducted an initial review of the evidence and determined that while the earlier information is important, it is not as critical to the investigations as information after that date.

For purposes of mediation efforts in this case, as well as in subsequent litigation, documents and information which existed on or before February 19, 2018 may be released without restriction. Documents and information from after that date may only be released if specifically authorized by NTSB, and only under an agreed protective order to ensure confidentiality and prevent further disclosure outside the confines of the mediation or litigation. The NTSB will review all requests for post-February 19, 2018 documents and information and provide determinations on release as quickly as possible. To facilitate this process, we have suggested to the parties a numbering system to track requests and permit easier coordination of responses; e.g. a designator such as "FIU-", "MCM-" or "FIGG-" to indicate the party from whom the document or information is sought, followed by a sequential number to track the individual requests.

Some parties to our investigation have already provided the NTSB with individual documents sought in discovery, for which we have provided release determinations. In some instances, parties to our investigation have informed us that the volume of responsive documents is quite significant. In an effort to expedite the review process in those instances, we have agreed to attempt to make release determinations based on categories of documents rather than reviewing individual documents. While this is not ideal, we understand the importance of allowing discovery to proceed as quickly as possible. If the categories are not sufficient for the NTSB to make release determinations, we will ask to review the individual documents. Regardless of which review method is employed, we expect there will be rolling release of documents as the NTSB makes its release determinations.

With respect to requests for admissions and interrogatories, the NTSB will review any proposed answers which include protected investigative information. The volume of such answers is expected to be low enough that individual answers can be reviewed, and release determinations provided quickly.

Finally, it is important to note the NTSB restrictions and the procedures outlined above only apply to those entities which are parties to the NTSB investigation. Entities which are not parties to our investigation are free to release anything in their possession according to normal rules of discovery. In addition, NTSB restrictions are temporary; once they are lifted by the

(3) Any information regarding the status of an investigation, or activities conducted as part of the investigation.

NTSB, parties to our investigation will no longer be prohibited from releasing the investigative information they possess in discovery or elsewhere.

The NTSB understands that you wish to proceed with this case, and we sincerely appreciate the Court's willingness to adjust normal processes to accommodate the conflicting obligations of some of the litigants. We are committed to minimizing the delay to discovery by providing release determinations as quickly as possible.

If it would helpful to discuss further the Court's needs in light of the NTSB's mission, please contact me at (202) 314-6107.

Sincerely,



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